

01/16/2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 00-6028

-vs-

CR-DIMITROULEAS

SNOW

U.S.D.C. MAGISTRATE JUDGE

DAVID G. TRACY,

Defendant,

NIGHT BOX

11/11/2000

11/11/2000

MOTION TO DISMISS/QUASH

CLARENCE MADDOX
CLERK, USDC/SDFL/FTL

NOW COMES the Defendant, pro se' in the above-within cause and moves this Honorable Court to DISMISS/QUASH WITH PREJUDICE Counts, I, II, and III of the Plaintiff's charged offenses against Defendant, and in support thereof your Defendant presents unto this Honorable Court the following:

1. That this Honorable Court lacks in personam and subject-matter jurisdiction over the Defendant. In Support, See Defendant's MEMORANDUM OF LAW, GROUNDS FOR RELIEF and SWORN VERIFIED AFFIDAVIT OF DEFENDANT with POINTS OF AUTHORITIES IN SUPPORT THEREOF, (said document's are copies from Civil pleadings filed in a Civil action against Plaintiff by your Defendant, and Defendant hereby incorporates and sets forth said arguments and documents in the instant case in support of Defendants' posture in the relief sought before this Court by your Defendant).

1.

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PC

2. That the charged information against your Defendant is reliant upon U.S.C. ss.7201 and Title 26 of Internal Revenue Service Code.

3. That Plaintiff's have failed to cite and/or allege a valid and legal Federal Criminal Statute to support the charged offenses against your Defendant. (See *Brief in Support hereto*, also see *Defendants' MEMORANDUM OF LAW, GROUNDS FOR RELIEF, AFFIDAVITS and POINTS OF AUTHORITIES heretowith*).

4. That Plaintiff's reliance upon Title 26 I.R.C. and U.S.C. ss. 7201, as a grounded basis for the charged offenses against Defendant is misplaced and error of law, as Title 26 has never been passed into Law by Congress, and Defendants' Affidavits, Memorandum Of Law, Grounds For Relief, and Points Of Authorities heretowith defeats Plaintiff's reliance upon U.S.C. ss. 7201.

5. That Plaintiff's prosecution of this Defendant has no basis in fact and/or law.

6. That Plaintiff's prosecution of your Defendant is an "abuse of Discretion", "arbitrary & capricious, "Prosecutorial Misconduct" and offends the maintenance of a sound Judicial Process.

7. That Plaintiff's charged Information against your Defendant fails to allege and state a Federal Criminal Law to support the charged offenses against defendant, thus Plaintiff's have effectively deprived Defendant of his Constitutional rights to Due Process, Equal Protection/ Application of the Laws Rights, under both United States Constitution and corresponding Florida Constitution as Defendant has been arrested and charged with a criminal offense(s) without any advisement by Plaintiff's of 'what Federal Criminal Statute they have allegedly violated' thus preventing Defendant from adequately defending himself.

8. That your Defendant is not liable to Plaintiff's for the alleged "Civil Assessments" made against Defendant and Plaintiff's are proceeding against Defendant in a unconstitutional, illegal manner. See *Memorandum of Law, Affidavits, Grounds For Relief, Points Of Authorities heretowith in Support*).

BRIEF IN SUPPORTLAW AND ARGUMENT:

The United States Supreme Court held in Berger vs. United States, 205 US 78, 55 S.Ct. 629; 79 LEd 1314 (1935), that a Prosecuting Attorney is more than a mere advocate; as a representative of the People, he has an obligation to ensure that an accused receives a fair trial.

The duty of the prosecutor is to present the evidence against the accused in a zealous manner as long as that zeal is within proper limits. Berger, Supra.

It is a fundamental principle of criminal law that the prosecution bears the burden of proving each and every element of the charged offense beyond a reasonable doubt and that this burden never shifts to the defendant. Patterson vs. New York, 432 US 197; 97 S. Ct. 2319; 53 LEd2d 281 (1971); In re Winship, 397 US 358 S. Ct. 1068; 25 LEd2d 368 (1970).

It is thus axiomatic that there is no burden whatsoever on a defendant to testify or to present any evidence or to prove his innocence or his innocent theories. Reasonable doubt can be based on the evidence or the lack of evidence.

In the case before this bench & bar what is glaringly wrong is two-fold. 1) Prosecution for Plaintiff has failed to even meet the threshhold requirement of citing a Federal criminal statute to support his charged offenses against your defendant. Prosecution cites and relies wholly upon Title 26 which has never been signed into law by Congress, and at best, Title 26 is nothing more than an "Administrative Rule" for the Internal Revenue Service. U.S.C. ss.7201 in addition Plaintiff relies upon, is moot and invalid when this Court canvasses Defendant's Affidavits, Memorandum Of Law, Grounds For Relief and Points Of Authorities annexed heretowith in support of Defendant's posture.

In Berger vs. United States, 295 US 78, 88-89; 55 S. Ct. 629; 79 LEd 1314 (emphasis added) (1935), the Court held:

The prosecuting attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest therefore, in a criminal prosecution is not that it shall win a case, but that

Justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape, or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

In the case before this bench and bar, here the prosecutor proceeded prosecution of your defendant and having Defendant arrested, based upon an Administrative Rule (Title 26), and not upon any Federal criminal Statute. This offends the rights of your Defendant, as well as the duties of prosecution using calculated methods to adduce a wrongful arrest and conviction of the Defendant.

It is Defendants' posture that Prosecutor for the Plaintiff "Abused his Discretion". The term "abuse" obviously communicates a very limited role for the reviewing Court's. It also comes with the checks and balances on discretion when there has been a clear abuse. The abuse of discretion standard preserves discretion "while assigning to the Court's responsibility for preventing intolerable exercises of such discretion." 2 Koch, **Administrative Law & Practice** (1994 Supp. West Publishing Co.), sec. 9.7(1), p. 102.

Even the broadest discretion is subject to review to determine that there has been a bona fide exercise. Lennon vs. United States, 387 F. Supp. 561, 564 (SD NY, 1975). One commentator summed up the boundaries of such discretion as not being unlimited and cautioned:

"Review of discretion is an essential feature of a system that purports to be governed by the rule of the law. 'Law has reached its finest moments' Justice Douglas has affirmed, "when it has freed man from the unlimited discretion of some ruler, some.....official, some bureaucrat.....Absolute Discretion is a ruthless master. It is more destructive of freedom than any of mans other inventions. United States vs. Wunderlich, 342 US 98, 101; 72 S. Sc. 154; 96 LEd 113 (1951)."

Defendant in-vites this Court to re-visit the cases of Haines vs. Kerner, 404 U.S. 519, 30 LED2d 652, 92 S. Ct. 694 (1972) S. Ct. at 596; Pucket vs. Cox, 456 F2d 223 (relying upon Haines vs. Kerner), where the Court has held that the Court's are to consider pro per,

pro se' litigants pleadings from a lesser standard than those drafted by a member of the State Bar Association.

Wherefore, your Defendant respectfully prays that this Honorable Court GRANT Defendants' Motion To Quash/Dismiss with Prejudice and thereafter issue and enter its Order granting same.

I, the defendant herein, pro se', hereby certify and declare under penalty of perjury that the statements herein are true to the best of my knowledge, information and belief. As to the authorities contained herein and accompanying pleadings, affidavits in support, I believe to be accurate and I rely upon same.

Dated: February 13, 2000.

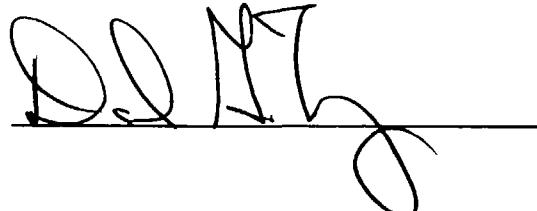

Respectfully Submitted,

DAVID G. TRACY

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 13th DAY OF FEBRUARY, 2000.


SALVATORE F. LEONANO
NOTARY PUBLIC
COMMISSION # CC 532218
EXPIRES MAR 24, 2000
BONDED THRU
ATLANTIC BONDING CO., INC.
rmt/def.
enclosures.

CC:
Prosecuting Atty/For The Plaintiff



PROOF OF SERVICE

THE UNDERSIGNED DEFENDANT HEREBY DECLARIES UNDER PENALTY OF PERJURY THAT ON THIS 15th DAY OF FEBRUARY, HE DID SERVE A COPY OF THE FOREGOING ON PROSECUTING ATTORNEY FOR PLAINTIFF, PERSONALLY AT THE U.S.D.C. COURTHOUSE, LOCATED AT 299 E. BROWARD BLVD., FT. LAUDERDALE, FLORIDA., IN THE YEAR OF 2000.


DEFENDANT-Pro Se
David G. Tracy
P.O. Box 11638
FT. LAUDERDALE, FLA. 33339

GROUND FOR RELIEF

This is an action brought by Petitioner, before this bench & bar for Judicial Review with Petitioner's companion MOTION TO QUASH/DISMISS, with supporting Verified Sworn Affidavit, Points Of Authorities and Memorandum Of Law in Support thereof, which Petitioner incorporates by reference as if fully set forth herein for purposes of case authority.

JURISDICTION:

Jurisdiction is founded upon several Federal Laws, the United States and corresponding State Of Florida Constitutions; Title 28 of the United States Code (28 U.S.C. ss: 1340 and 1361), Sec. 6213(a) of the Internal Revenue Code of 1954 (26 U.S.C. 6213(a); 26 U.S.C. Sec. 6212, 6861(b), 6213(a); U.S. Const. Amx., IV, V, VI, VIII, XI, XIV and corresponding Florida Constitution.

It is Petitioner's posture that an unconstitutional act, as Petitioner claims is the case before this bench where Respondent's engage in income tax collection activity, assessment, levy, lien, sales or otherwise against your Petitioner, is unconstitutional acts and amounts and rises to the level of, not being law, as it confers no rights, it imposes no duties, affords no protection and accordingly, it creates no office, it is in legal contemplation, as inoperative (the respondents acts), as though it had never been passed. Norton vs. Shelby County, 118 U.S. at 425. See also, Boyd vs. U.S., 116 U.S. at 616, where the Court held: The Court is to protect against any encroachment of constitutionally secured rights.

For the reasons of constitutional issues raised, Petitioner cannot appeal to the United States Tax Court.

The Due Process Clause of the Fifth Amendment guarantees that no person shall...be deprived of life, liberty or property without due process of law. The Supreme Court's precedent's establish the general rule that individuals must receive notice (and an opportunity to be heard before the government deprives them of property. United States vs. \$8,850, 461 U.S. 555, 562, n. 12, 103 S. Ct. 2005, 2011, n. 12, 76 LEd2d 143 (1983); Fuentes vs. Shevin, 407 U.S. 67, 82, 92 S. Ct. 1983, 1995, 32 LEd2d 556 (1972); Sniadach vs. Family Finance Corp. Of Bay View, 395 U.S. 337, 342, 89 S. Ct. 1820, 1823, 23 LEd2d 349; Mullane vs. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 656, 94 LEd at 865.

It is well settled law that Petitioner has an absolute constitutional right with exclusive

ownership rights, over his properties and monies. It is possible to waive constitutional rights by contract, however, under the common law and according to the United States Supreme Court decision of Brady vs. U.S., 742 at 748 (1970), the Court held: "Waivers of Constitutional Rights not only must be voluntary, they must be knowingly intelligent acts, done with sufficient awareness of the relevant circumstances and consequences."

To the best of Petitioner's knowledge, and belief, he has never entered into, knowingly and voluntarily, any contracts with the Respondent's-Defendant's, in which Petitioner was making an intelligent, knowingly and voluntary waiver of any of his claimed rights, -thus any potential conceivable and/or arguable contract or waiver that Respondents may assert, your Petitioner submits same was not voluntary nor intelligently and knowingly made by Petitioner.

Petitioner avers that your Respondent's-Defendant's had no jurisdiction to make assessments, liens, sales, issue withholding orders against your Petitioner as Petitioner is not liable for any alleged debts, assessments claimed by Respondent's-Defendant's.

*****NOTE**** 26 USC Sec. 7421(a) (or corresponding State Revenue Statues) do not bar this action because, as supported herein with accompanying Petitioner's Verified Sworn Affidavit with supporting Points Of Authorities, "Under the most liberal view of the law and facts", Defendant's cannot establish its claims against Petitioner. - - - - - Pietsch vs. President Of The United States, (CA2NY) 434 F.2d 861, cert den 403 U.S. 920, 29 LEd2d 698, 91 S. Ct. 2236; as no lawfull assessment has been filed and served against Petitioner and the acts of Defendant's-Respondent's are unlawful, unconstitutional, fraudulent, vexatious, malicious, and if the lien, assessment, levy, withholding order against Petitioner is not reviewed by this Honorable Federal Court, and subsequently quashed, Petitioner will have suffered and continue to suffer irreparable injury and a arbitrary & capricious action that is offensive to the maintenance of a sound judicial process and miscarriage of justice will have occurred.

The Sixth Circuit has held that a reviewing Court "may hold that the agency abused it's discretion if no evidence supports the decision", or if the agency mis-applied the law. National Engineering & Contracting Co., vs. Osha, 928 F.2d 762, 768 (CA 6, 1991), citing Oakland County Board Of Commissioners vs. United States Dept. Of Labor, 853 F.2d 439, 442 (CA 6, 1988). The United States Supreme Court has unequivocally held that the due process requirement of a fair trial in a fair tribunal, applies to Administrative Agencies which adjudicate as well as to the Courts. Withrow vs. Larkin, 421 US 35, 46; 95 S. Ct. 1456 LEd2d 712 (1975).

Petitioner's posture is that he not liable for alleged taxes, civil fines, sanctions, assessments, levies, liens, sales, withholding orders, and said posture is well supported by the Federal Court decisions and United States Constitution as well as the additional authorites presented by Petitioner.

Defendant's-Respondent's clearly abused their discretion, mis - applied law and in effect did fraudulently assess Petitioner. Any Authorities State or otherwise argued by Respondent's-Defendant's in opposition to Petitioner's claims, that are not in harmony with the State and Federal Constitution and Federal Courts decisions presented by Petitioner, must fail and this Court must apply the analysis and principles laid down by our Federal precedents regarding the issues and claims before this bench & bar.

**This body of law is made binding on
all judges, state and Federal, by
the Supremecy Clause of the United
States Constitution;**

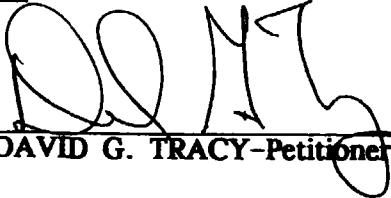
**This Constitution, and the laws of
the United States which shall be
made, under the authority of the
United States shall be the Supreme
law of the land; and the judges in
every state shall be bound thereby,
anything in the constitution or the
laws of any state to the contrary
notwithstanding.**

((U.S. CONSTITUTION, ART. VI.))

In the event that Defendant's-Respondent's assert a claim-defense argument under the Sovereign Immunity By The Anti-Injunction Act, it is therefore Petitioner's posture that this Act is not applicable as it bears no legal relationship to Petitioner's claims against Defendant's-Respondent's.

42 USC 1983: Every person who, under color of any statue, ordinance, regulation, custom or usage, of any state or territory or the District Of Columbia, subjects, or causes to be subjected, any citizen to the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunitiess, "secured by the U.S. Constitution and laws" shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

02-11-2000



DAVID G. TRACY-Petitioner-Plaintiff

*Exhibit #1***AFFIDAVIT OF CITIZENSHIP AND DOMICILE****Pursuant to: 8 Federal Registar, pg 12266 sec.40.10,4(g) CL 1,3:**

I hereby certify that I, David Tracy was born in the Conn. Republic. I was not born in a territory overwhich the United States is sovereign and I am, therefore, not subject to its jurisdiction and I am not a citizen of the United States, as defined in 26 CFR 1.1-1(c). I am not liable for the Title 26, Internal Revenue Code (IRC), Subtile A, sec.1 graduated income taxes for reasons of my alienage.

c) "Who is a citizen: Every person born or naturalized in the United States and subject to its jurisdiction is a citizen."

3A Am Jur 1420-Aliens and Citizens "A Person is born subject to the jurisdiction of the United States for purposes of acquiring citizenship at birth, if this birth occurs in a territory overwhich the United States is sovereign..."

I am a citizen of the contiguous Florida Republic, and am domiciled in Broward county, where I have occupied such status since approximately 1978 for a period of approximately 21 years and 0 months. I am, therefore, a natural born citizen of one of the 50 sovereign states in America.

I am, therefore, a natural born Citizen of one of the 50 states, under the Law and the Constitution. I am "nonresident to" and "not a dweller within" the jurisdiction of Art, 1, sec. 8 CL 17 and Art, IV, sec.3 Cl 2 of the constitution for the United States of America, in which Congress "exercises exclusive Legislation in all cases whatsoever, over such District not exceeding ten miles square," beyond the seat of Government or places legally ceded by the states for the erection of Forts...Arsenals, and other needed buildings, or any other territoriesor properties "belonging to" the United States. I am, therefore, not liable for the Title 26 USC, Subtitle A, sec. 1 graduated income tax for reasons of my nonresidence.

"It is a well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States, unless a contrary intent appears" Foley Brothers v. Filardo. 336, U.S. 281

I am a sovereign Citizen of one of the 50 contiguous states of America, under the Constitution and the Law. As such, I am a "Nonresident Alien" {as such 'word of art' is defined inIRC ~~sec.7701~~ (b) (1) (B)} under United States Tax Laws [Title26 United States code and the Internal Revenue Code].

26 CFRsec.31.3401 (a) (6)-1(b) "Remuneration paid to a nonresident alien individual...is exempted from wages and hence is not subject to withholding."

I declare under penalty of perjury under the Laws of the United States of America that the foregoing is true and correct.

02-11-2000.

DAVID G. TRACY-Affiant-Petitioner

Exhibit #2

**AFFIDAVIT OF CLAIMS FOR EXEMPTION AND EXCLUSION FROM
GROSS INCOME OF REMUNERATION, WAGES AND WITHHOLDING**

I, DAVID G. TRACY hereby claim an exemption and exclusion from gross income of all remuneration and compensation for labor, earned in the 50 states, from the 26 IRC, Subtitle A graduated income tax and 26 IRC, Subtitle C Employment taxes for the following reasons.

1) Title 26, United States Code, is federal legislation applicable ONLY to the territorial jurisdiction of the United States. I am a natural born Citizen of one of the 50 states and not within such jurisdiction.

2) I affirm that I have never received income or compensation from within any federal territory, possession, enclave or instrumentality over which the United States is sovereign.

3) Compensation and remuneration for labor is property and, under the Constitution (Art. 1, sec. 2 Cl. 3, Art. 1, sec. 9, Cl. 4)*, are income not taxable by the Federal Government, and are excluded from "Gross Income" and exempt from taxation under Title 26, under the authority of 26-CFR (1939) sec. 9.22(b)-1. Further as a Citizen of the 50 states, under the Constitution and Law, it is my right to labor in a common and unregulated occupation and, under the fundamental law, the exercise of a right is free from tax, pursuant to Treasury Decision, Internal Revenue Vol. 26 No. 3640. p. 769 1924. CFR 26(1939) Part II, Subtitle B sec. 3.21-1.

**The 16th Amendment did not relieve the Government from Constitutional rules of apportionment for the imposition of Direct taxes on property, as evidenced in supporting Facts attached to this document.*

4) The supreme Court, in numerous unoverturned cases, has ruled that the income tax is an indirect excise tax, dependent upon the exercise of a privilege. My remuneration is property, upon which an indirect tax cannot be imposed. I have not received, nor do I intend to receive any excise profits, gains, or interest from sources "within" the United States and I am exercising no taxable privileges.

5) Further, pursuant to the Public Salary Act of 1939, TITLE I - SECTION 1. sec.22(a), I do not earn "gross income." I have earned no compensation for personal services as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any of the foregoing.

6) I am not an "employee" as defined in 26 CFR sec.31.3401 (c). Because I am not such an "employee", I do not earn "wages" under IRC sec.3401. I am also not a corporate officer, under a duty to withhold.

7) Further, I am not involved in any Revenue Taxable Activities, including, but not limited to, the Alcohol, Tobacco and Firearms industry.

8) The income tax is voluntary, I do not wish to volunteer.

In summary, I am not subject to your jurisdiction and I have not received, nor do I intend to receive any taxable income under Title 26 USC. Failure to respond within 30 days will mean that you have acquiesced to this claim in its entirety and from this date forward, the doctrine of "estoppel by acquiescence" will prevail.

I declare under penalty of perjury under the Laws of the United States of America that the foregoing is true and correct.

02-11-2000

DAVID G. TRACY-Affiant-Petitioner

Exhibit #3

AFFIDAVIT

*Establishing my "exempt" status with respect to Federal Income Taxes, pursuant to
26 USC 3402(n) and 26 CFR §31.3402(n)-1*

This is my sworn affidavit, pursuant to IRC §3402(n)-1, and 26 CFR §31.3402(n)-1, certifying that:

1. I incurred no liability for income tax imposed under subtitle A of Title 26 of the Internal Revenue Code for the preceding taxable year.
2. I anticipate that I will incur no liability from income tax imposed under Subtitle A of Title 26 for the current taxable year.
3. I had a right to a full refund of any and all amounts withheld for the past two years.

02-11-2000.

DAVID G. TRACY-Affiant-Petitioner

26 USC §3402(n)-1, CFR 31.3402(n)-1 — EMPLOYEES INCURRING NO INCOME TAX LIABILITY. — "Not notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter [Chapter 24] upon a payment of wages to an employee if there is in effect with respect to the payment, a withholding exemption certificate furnished to the employer by the employee which contains statements that— (a) The employee incurred no liability for income tax imposed under subtitle A of the Code for the preceding taxable year; and (b) The employee anticipates that he will incur no liability for income tax imposed by Subtitle A for his current taxable year."

26 CFR §31.3402(f)(2)-1—WITHHOLDING EXEMPTION CERTIFICATES.—(a) On commencement of employment. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate...OR if the statements described in §31.3402(n)-1 are true with respect to an individual, he may furnish his employer with a signed withholding exemption certificate which contains such statements in lieu of the first mentioned [W-4] Certificate.

You may verify my statement against the law itself, to establish that I have fulfilled of the requirements contained in the law. The law makes it perfectly clear that, "notwithstanding any other provision... the employer shall not be required to withhold any tax..." if I provide you with the certified statement contained in this affidavit.

Regardless of what the IRS may want you to believe, it is not lawfully within the discretion of an employer to change or correct a verified affidavit which I have signed under the penalty of perjury, unless they are willing to prove in a court of law, that I have perjured myself. The IRS cannot penalize you for merely obeying the law. A Citizen, however, can sue you for taking his or her private compensation, contrary to the law, and against his or her consent and the IRS will provide you no protection or immunity.

"The Employer is not authorized to alter the [W-4] Form and disallow the employee's claims." - U.S. vs. Malinkowski, 47 F Supp. 352 (1972)

Let me remind you that no verbal threat or letter from the IRS can abrogate my sworn statement and the clear intent of the law.

Any Code Section that the IRS may quote from 26 USC Chapter 24, is applicable only to compensation for services as a public servant or Government Employee and not to workers in the private sector, unless such private workers have voluntarily agreed to such withholding, by filing a W-4. See definitions of term "EMPLOYEE" and "WAGES" in Federal Register, Tuesday, Sept. 7, 1943, pg. 12267, and 26 USC §3401(a)(c), and Public Salary Act of 1939, TITLE I -- SECTION 1 for proper definition of term "Compensation for Services," as it relates to "gross income" in [1939] 26 U.S.C. §22(a) [currently 26 U.S.C. §61].

MEMORANDUM OF LAW

1a. Pursuant to the statutory requirements of 26 U.S.C. 6201, 6203 and 26 C.F.R. 301.6201 and 301.6203, no valid Summary Record of Assessment, has been filed in this case before this bar & bench.

"Absent an assessment there is no debt, as the debt only attaches when the assessment is properly made, *Bull vs. U.S.*, 914 F.2d 245, and for a tax liability to be duly collectible, it must have been properly assessed. *In Re Western Trading Co.*, 340 F. Supp. 1130 (D. Nev. 1972); *Estate Of Goetz vs. U.S.*, 286 F. Supp. 128, at 131 9d Mo. (1968). "These statutory procedures must be followed in the process of administratively collecting taxes." *U.S. vs. Berman*, 825 F.2d 1053, 1055 (CA 6, 1987).

It is well established in law that in order to have a valid sale, there must be a valid seizure; and to have a valid seizure, there must be a valid lien; and to have a valid lien----there must be a signed 23C (Summary Record of Assessment) and a Form 4340 (Certificate Of Assessments and payments) before there is a valid assessment. *Coplin vs. U.S.*, 952 F.2d 403; *Fullmer vs. U.S.*, 93-U.S. Tax case. P50, 657; *U.S. vs. McCallum*, 970 F.2d 66; *Brewer vs. U.S.* 746 F. Supp. 309; *Geiselman vs. U.S.* 961 F.2d 1; *Tweedy vs. U.S.* 74 AFTR 2d 5003; *Fisher vs. U.S.* 860 F. Supp. 680. A proper assessment must also have IRS FORM 2666, Certification of Transcript, an IRS Form 4340 "Certificate Of Assessment" (IRS Document 7130 at pg. 33) and must come from the service center, and the procedural assessment itself must be pursuant to IRM-HB 1272 and IRM-HB 48 (13):

NOTE ON REFERENCE TO IRM. In citing the Internal Revenue Manual, PETITIONER is aware that such is not law, in and of itself. However, it is indicative of ruling case law on the particular topic and constitutes recognized procedure.

"Assessments, deficiency and levies must be procedurally correct."

Rodriguez vs. United States, 729 F. Supp. 333, 339-340.

"Assessment officers make IRS assessments through completing and signing Forms 23(c), entitled 'Summary Record Of Assessment'." *(Geiselman vs. United States*, 961 F.2d 1, 6 (1st Cir.), cert denied, 506 U.S. 891, 121 L.F.d 2d 191, 113 S. Ct. 261 (1992)). The "23(c) dates", meaning the date upon which the assessment officer signs the form 23(c), and constitutes the assessment date.

1b. Pursuant to the statutory requirements of 26 USC 6212 and CFR 301.6212, no valid Notice Of Deficiency, with a bona fide hand written, attested signature, signed under penalties of perjury, by an appeals officer, on behalf of the Commissioner of the IRS, has been sent to plaintiff Petitioner David Tracy, via CERTIFIED MAIL, as required by Regulations.

IR Manual
512 (1-5-83)
"Preliminary Notices Of Deficiency" 8(24)50
Procedure

".....(5) The (Deficiency) Notice is signed in pen and ink, on behalf of the Commissioner, by the approving appeals officer....Any copies of the statutory notice letter which are used for the originals or duplicate originals should have a handwritten signature and not a facsimile or reproduced signature...."

"An assessment is illegal and void if no required (valid) deficiency notice is sent to the taxpayer." - United States vs. Williams, (1958 DC NY) 161 F. Supp. 158.

58-1 USTC 9213. 20 Fed Proc. L Ed 48:440.

1c. Pursuant to 26 USC and 26 CFR 6303 and 301.6303, no valid, and attested and signed Form 17A NOTICE AND DEMAND as required by statute, was served upon Plaintiff-Petitioner David Tracy

"Internal Revenue Key 4957" "Taxpayers would be entitled to income tax refund if collection was effected by illegal use of liens and levies in absence of notice and demand from IRS."

The Berman Court, Supra, stated that, "mailing a notice of assessment and demand for payment to the taxpayer" pursuant to section 6303(a), is a part of the process which must be accomplished before invoking the collection powers. Title 26 U.S.C. Section 6303(a) states:

"where it is otherwise not provided by this Title, the Secretary shall, as soon as practicable, and within (60) days after the making of an assessment of a tax pursuant to section 6203, give notice to each person thereof..."

Also, Section 6303(a) requires Notice Of A particular kind. U.S. vs. Jersey Shore Bank, 782 F.2d 974 (Ca-3 1986); and Jersey Shore Bank vs. U.S. 107 S. Ct. 782, at 785 (1987). Hence, Sections 6303(a) and 6331(d) require totally separate and distinct notices for entirely different purposes. The failure of the service to notify an individual within 60 days that a tax has been assessed invalidates the alleged assessment. Bauer vs. Foley, 404 F.2d 1215 at 1221-22. Absent a valid "notice and demand," the penalty assessment likewise must fail.

The use of notice of assessment and demand for payment is mandated by seven sections of the code as follows: 6155(a), 6156(d), 6213(3), 6215(a), 6303, 6861(a),(f), and 6331. IRS Form 17A has been formalized as the appropriate form, as identified in United States vs. Lehigh, 201 F. Supp. 224, as the statutory "Statement of "Income Tax Due." In United States vs. Pavernick, 197 F. Supp. 257 (1961), the court emphasized that "upon proof of demand the government lien arises at the time of assessment by the collector." Absent the prescribed mailing of Form 17A, "Statement of Income Tax Due", the government may not assert its ADDITIONS. This is controlled by regulations promulgated by the Secretary under Treasury Decision, T.D. 1995.

Whereas, the IRS has not sent a valid notice as required under Section 6303(a) and regulation under T.D. 1995, within 60 days of the date of the alleged assessment, the service is not in compliance with its own internal procedures on the "balance due notices." See IR manual 2(17), (946) 6.2 MT3.(17)00174, P.3.(17) (46)0-45 (1--1-88). This is a violation of Administrative Law and voids the agency action. Lojeski vs. Boardl, 86-2 USTC 9494 (CA 3 1986), U.S. vs. Sourpas, 515 F.2d294 (CA 9 1975); and U.S. vs. Heffner, 420 F.2d 809, 811-12 (CA 4-1970).

In Administrative law, the term "jurisdiction" has three aspects: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the agencies scope of authority under statute. Compliance with jurisdictional requirement is essential to give validity to the DETERMINATIONS of administrative agencies; absent such compliance, as in the case before this bench & bar, their acts are void and open to collateral attack. (A)ctions by an agency in violation of its own regulations or procedures are illegal, void and constitute procedural error." VanderMolen vs. Stetson, 571 F.2d 617 (1977); Connecticut Light & Power Co., vs. Nuclear Regulatory Comm'n, 673 F.2d 525, cert. denied, 137 S. Ct. (1982).

1d. This action has not been authorized by law, as follows:

55 F.R. 47633, (Nov. 14, 1990) 27 CFR 70.191

Authorization. (a) In General. No civil action for the collection or recovery of taxes, or any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau shall be commenced unless the Director, Bureau Of Alcohol, Tobacco & Firearms, or designated delegate, directs that the action be commenced.

Pursuant to 26 CFR 301.7401-1: Authorization - (a) "No civil action for the recovery or collection of taxes, or of any fine, penalty or forfeiture shall be commenced unless the Commissioner or Director, Alcohol, Tobacco & Firearms Division or the Chief Counsel, for the Internal Revenue Service or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced."

Defendant's Respondent's did not merely exceed their jurisdiction, they plainly had and have no jurisdiction whatsoever, over the Petitioner David Tracy or over the subject-matter.

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter, any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the Judge, no excuse is permissible." Bradly vs. Fisher, 13 Wall. 335, 351, 352.

26 CFR ss 601.106(f)(I) states

"(1) Rule 1. An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution....."

2. WITHHOLDING ORDER, levy, lien is defective and insufficient on the following grounds:

2a. Order was not personally served;

2b. No Writ Of Execution and/or Writ of Attachment was served with any Order.

Enforcement of judgements, generally, see Code Of Civil Procedures 680.010 et seq."

3. Petitioner David Tracy has no commercial dealings and is not involved in any trades, businesses or professions, as such terms are defined in United States Tax Laws and for the State income Tax purposes.

4. The Right of the Petitioner-Plaintiff to be protected against ineffectual levies, withholding orders, liens and seizures, prior to the due process of the law, is recognized in the Fifth Amendment to the Constitution for the United States and corresponding Amendment in the Florida Constitution.

"No person shall be.....deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

The Constitution for the United States is the Supreme Law of the land. (Constitution for the United States, Art. VI, Cl. 2, ss.3) admitting to no exceptions, and any statue to the contrary is null & void in the Union States. (16 Am Jur 2d ss. 177, late Am Jur 2nd ss 256).

5. Withholding Order is defective on its face, being unsigned with an authentic bonafide signature by a lawfully delegated officer; being unattested and bearing no court seal and no court docket number.

6. Plaintiff David Tracy is a non-resident to the "state of the forum" of your agency. It has been well-settled by the Supreme Court that the income tax is an excise tax, which is synonymous to a privilege tax. David Tracy is exercising no corporate privileges, official privileges or any other privileges upon which such an income tax could be manditorily imposed.

"The conclusion reached in the Pollock case.....recognized the fact that taxation on income was, in its nature, an excise, entitled to be enforced as such."

Brushaber vs. Union Pacific Railroad Co., 240 U.S. 1, 16-17.

"The term "excise tax" is synonymous with "privilege tax" and the two have been used interchangably. Foster & C. Co. vs. Graham, 154 Tenn 412, 285 SW 570, 47 ALR 971.

Whether a tax is characterized in the statue imposing it, as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax. Bank Of Commerce & T. C., vs. Senter, 149 Tenn 569, 260 SW 144. American Airways vs. Wallace, 57 F.2d 877, 880.

71 Am Jur 2nd, under state and local taxation: Excise: "In its modern sense, an excise tax is any tax which does not fall within the classification of a poll tax or a property tax, and which embraces every form of burden not laid directly upon persons or property. Idaho Gold Dredging Co., vs. Balderston, 58 Idaho 692; Dooley vs. Detroit, 370 Mich 194; Foster & C. Co., vs. Graham, 154 Tenn 569. In summary, this Court is stating that there are only two types of taxes in the United States. A tax must either be a direct tax, in which case its subject to the rules of apportionment, or a privilege tax. A privilege tax can never be imposed upon the exercise of a right under the Constitution.

"An excise is.....a duty levied upon licenses to pursue certain trades or deal in certain commodities, upon official privileges, (i.e., government jobs) etc.. Black vs. State, 113 Wis. 205, 89 NW 522.

"The obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege, or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking." (i.e., If you don't want to pay the tax, simply don't exercise the privilege). People ex rel. Attorney General vs. Naglee, 1 Cal 232; Bank Of Commerce & T. Co., vs. Senter, 149 Tenn. 441, 381 SW 144.

The Income Tax is not a tax on income but a tax imposed upon a privilege, measured by income.

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existance and charter power to the state, but the individuals right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed. Redfield vs. Fisher, 292 Oregon 814, 817.

"Legislature.....cannot name something to be a taxable privilege unless it is first a privilege." (Taxation West Key 53).... The right to receive income or earnings is a right belonging to every person and realization and receipt of income is therefore (n)ot a "privilege that can be taxed". Jack Cole Company vs. MacFarland, 337 S.W. 2d 453, Tenn.

7. Plaintiff-Petitioner David Tracy is not a resident of the District Of Columbia, a federal enclave or instrumentality and is not within the class of persons upon whom FTB has the authority to impose a mandatory income tax.

(See also in support thereof, Petitioner's accompanying Verified Sworn Affidavit with Points Of Authorities heretowith).

8. Plaintiff David Tracy is not within the class of persons subject to levy, withholding and distraint authority by either the Internal Revenue Service or the State Income Tax agency which operates under the Federal Conformity clause, adhering to the same rules and regulations as the IRS, having limited, "levy and distraint" authority as follows:

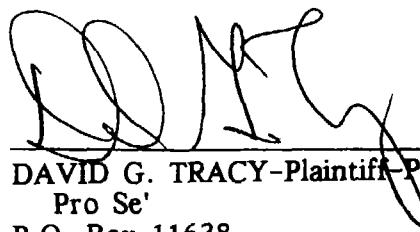
LEVY & DISTRAINT: - 26 USC 6331(a) AUTHORITY OF SECRETARY:

".....Levy may be made upon the accrued salary or wages of any Officer, employee or elected official of the United States, the District Of Columbia or any agency instrumentality of the United States or District Of Columbia....."

26 CFR 301.6331-1(a)".....(4) Certain Types of Compensation- (I) FEDERAL EMPLOYEES. Levy may be made upon the salary or wages of any officer or employee (including members of the armed forces) or elected or appointed official, of the United States, the District Of Columbia, or any agency or instrumentality of either...."

Petitioner's authorities cited herein as well as the accompanying Sworn Verified Affidavit with supporting Points Of Authorities and authorities additionally cited within the accompanying Motion To Quash/Dismiss , as a matter of law, entitle the relief requested and demanded.

Respectfully Submitted,



DAVID G. TRACY-Plaintiff-Petitioner
Pro Se'
P.O. Box 11638
Ft. Lauderdale, Florida 33339

enclosures

cc:
U.S. ATTORNEY

SWORN VERIFIED AFFIDAVIT OF DAVID TRACY

The foundation of Commercial Law is based upon certain eternally just, valid, and moral precepts and truth, which have remained unchanged for at least six thousand (6,000) years, having its roots in Mosaic Law. Said Commercial law forms the underpinnings of Western Civilization, if not all Nations, Law, and Commerce in this world. Commercial Law is non-judicial and is prior and superior to, the basis of, and cannot be set aside or overruled by the statutes of any Governments, Legislatures, Governmental or Quasi-Governmental Agencies, Courts, Judges, and law enforcement agencies, which are under an inherent obligation to uphold said commercial Law.

KNOW ALL MEN, THAT I CERTIFY IN THIS AFFIDAVIT OF TRUTH THAT FOLLOWING FACTS ARE TRUE, CORRECT AND COMPLETE.

I, David Tracy Sui Juris, the undersigned, a Citizen of the Florida Republic, do domiciled in do solemnly affirm, declare, attest and depose:

1. *That I am of lawful age and am competent to make this Affidavit.*
2. *That I have personal knowledge of the facts and stated herein.*
3. *That I am not under the lawful guardianship or disability of another. This sworn affidavit is made as a matter of record of my own right, sui juris, in my own proper status, propria persona.*
4. *I was naturally born in the contiguous Conn. and I am domiciled in Broward county, where I have occupied such status since approximately 1978 for a period of approximately 22 yrs.*
5. *I, David Tracy, am a natural born, sovereign, preamble, de jure Citizen of one of the 50 sovereign Republic, freely associated compact American states.*
6. *I am a Citizen under the Constitution of 1787, the Bill of Rights, ratified in 1791, and precedent decisions of Article III Justice Courts of Law.*
7. *I have rights which are inalienable and were endowed by my Creator and secured by the Constitution. I do not waive any of my rights at any time.*
8. *The government of the United States may assume no power over the People of the 50 sovereign states that were not specifically delegated to it in said Constitution.*
9. *I do not owe my Citizenship to the 14th Amendment.*
10. *I am not liable for the Title 26 USC, Internal Revenue Code (IRC), Subtitle A, §1 graduated income taxes for reasons on my alienage to the State of the forum of United States Tax Laws.*
11. *I was not born in a territory over which the United States is sovereign.*

12. *I am not a citizen subject to its jurisdiction, as such term is defined in 26 CFR I.1-1 (c).*

(c) *"Who is a citizen: Every person born or naturalized in the United States and subject to its jurisdiction is a citizen."*

3A Am Jur 1420. Aliens and Citizens *"A Person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if this birth occurs in a territory over which the United States is sovereign..."*

13. I am "nonresident to" and "not a dweller within" the jurisdiction of the "State of the Forum" of ART I §8 Cl. 2 of the Constitution for the United States of America, in which Congress "exercises exclusive Legislation in all cases whatsoever, over such District not exceeding ten Miles square," beyond the seat of Government or places legally ceded by the states for the erection of Forts, Arsenals, and other needed buildings, or any other territories or properties "belonging to" the United States. I am, therefore, not liable for the Title 26 USC, Subtitle A, §1 graduated Income tax for reasons of my nonresidence to such State of the Forum.

"It is a established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears."

Filardo, 336, U.S.

14. I am not a "resident of", "inhabitant of", "franchisee of", "subject of", "ward of", "property of", "chattel of" or "subject to the jurisdiction of" the State of the Forum of any United States, the corporate State, corporate County, or corporate City, Municipal, body politics created under the primary authority of Art. I. §8. Cl. 17 and Art IV. §3.Cl.2 of the Constitution for the united States of America and I am not subject to any legislation created by such authorities and I am not subject to the jurisdiction of any employees, officers or agents deriving their authority therefrom. Further, I am not subject of Administrative and Article I Courts or bound by precedents of such courts.

"Legislation enacted by Congress applicable to the inferior federal courts in the exercise of the power under Article III of the Constitution cannot be affected by legislation enacted by Congress under Art.I, §8, Cl. 17 of the constitution."

D.C. Code, Title 11 at p. 13.

15. As a Sovereign Citizen of one of the 50 states, under the Constitution and

Law, only Article III Justice Court of Law decisions are applicable to me.

16. TAKE NOTICE that I hereby cancel any presumed election made by the United States Government or any agency or department thereof that I am, or ever have been, a citizen or resident of any territory, possession, instrumentality or enclave, under the sovereignty or exclusive jurisdiction of the United States as defined and limited in the Constitution for the United States of America in Article I, §8, Cl. 17 and Article IV, §3, Cl. 2. I further cancel any presumption that I ever voluntarily elected to be treated as such a citizen or resident.

17. TAKE NOTICE that I revoke and cancel all of my signatures on any other forms which may be construed to give the Internal Revenue Service or any other agency or department of the United States Government, created under the authorities of Art. 1, §8, Cl. 17 and Art IV, §3, Cl. 2 of the Constitution for the United States, authority or jurisdiction over me. I revoke, rescind and make void ab initio, all powers of attorney, in fact, in presumption, or otherwise, signed either by me or anyone else, with or without my consent as such power of attorney pertains to me, by but not limited to, any and all governmental/quasi/colorable, public, Governmental entities or corporations, on the grounds of constructive fraud and non-disclosure.

18. I am not an officer, employee, or elected official of the United States, the District of Columbia or any agency or instrumentality of the United States or District of Columbia.

19. I am not an officer of a Corporation under a duty to withhold.

20. I am not an "employee" as such "term" is defined in Law and in the Internal Revenue Code. Federal Register. Tuesday. Sept 7. 1943. §404.104. pg. 12267: Employee: "The term 'employee' specifically includes officers and employees, whether elected or appointed, of the United States, a State, territory, or political subdivision thereof, or the District of Columbia or any agency or instrumentality of any one or more of the foregoing."

§3401(c) EMPLOYEE – "For purposes of this chapter, the term employee includes an officer, employee or elected official of the United States, a State or any political subdivision thereof, of the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term also includes an officer of a corporation."

21. Because I am not an "employee". I do not earn "wages" as such terms are defined in the Internal Revenue Code. The term wages is defined in §3401(a) as: (a) Wages - "...the term 'wages' means all remuneration...for services performed by an employee for his employer..."

22. *Further, pursuant to the Public Salary Act of 1939, Title I, §1, I do not earn "gross income" as such term is defined therein.*

Public Salary Act of 1939, TITLE I – SECTION 1. §22(a) of the Internal Revenue Code relating to the definition of "gross income" (is amended after the words compensation for personal service") includes [only] personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing."

23. *I am not involved in any type of "revenue taxable activities" including, but not limited to, the manufacture, sale or distribution of alcohol, tobacco, or firearms or any other regulated industry, trade or profession. I am not involved in any wagering activities.*

24. *I do not reside in or obtain income from any source within the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, or any other Territory, Possession, enclave or instrumentality of the United States or of the District of Columbia.*

25. *I am not a United States Person, United States Resident, U.S. Individual, U.S. Corporation or "citizen subject to its jurisdiction", as such "words of art" are defined in the Internal Revenue Code and other applicable U.S. Codes.*

26. *The 16th amendment did not repeal the Constitutional apportionment restrictions imposed on direct taxes (Art I, §2, Cl. 3, Art. I, §9, Cl. 4). Taxes on Personal property are direct taxes not taxable by the federal government unless apportioned according to the census of the states.*

27. *Compensation for Labor and exercise of the Right to Labor are personal property and, as such, are items of income under the Constitution (Art. I, §2, Cl.3, Art I, §9, Cl. 4), and not taxable by the Federal Government as a graduated income tax. Compensation earned and exercising the Right to Labor is excluded from "Gross Income" and is exempt from taxation under Title 26, under the authority of Title 26, CFR (39) §9.22(b)-1, as follows:*

26 CFR (1939) §9.22(b)-1 Exclusions from gross income – The following shall not be included as gross income and shall be exempt from taxation under this title:

(b)-1 Exemptions; exclusions from gross income. Certain items of income...are exempt from tax and may be excluded from gross income...those items of income which are under the Constitution, not taxable by the Federal Government."

28. *The 16th Amendment is limited to only indirect taxes.*

29. *The income tax is an excise tax. My compensation for labor is my personal property and is not taxable by the federal Government except by rule of apportionment.*

30. *An excise tax CANNOT be imposed upon the [natural] person measured by his/her income, because such a tax would be a direct capitation tax, subject to the rule of apportionment and not an excise tax.*

31. *The requirement to pay an excise tax involves the exercise of a privilege. I am exercising no taxable privileges.*

32. *I provide for my existence by working in a nontaxable occupation of common right.*

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's Right to live and own property are natural Rights for the enjoyment of which an excise cannot be imposed... We believe that the conclusion is well justified that a tax laid directly upon the income of property, real or personal, may well be regarded as a tax upon the property which produces the income." Redfield v. Fisher, Oreg. Sup Ct. 292 at 813, 817, 819. (1930)

33. *My compensation constitutes the "fruits of my labor". This is my substance and my personal property and the Government may not deprive of any portion of my property by appropriating it against my will.*

34. *The Victory Tax Act of 1942 [56 Stat, Ch 619 Pg. 884 10/21/42] which implemented "withholding" and 1040 Return requirements, stated:*

§476 "The taxes imposed by this subchapter shall not apply with respect to any taxable year after the date of cessation of hostilities in the present War [World War II]."

On May 29, 1944 (58 Statutes at Large, Cap 210 §6 (a) REPEAL OF VICTORY TAX pg 235) the Victory Tax and its provisions for Withholding was repealed.

IN SUMMARY:

a) *I am not an "employee" earning "wages" and have no "gross income" as such "terms" are defined in the Internal Revenue Code, the Public Salary Act of 1939 and in Law.*

b) I am exercising NO taxable privileges and I earn no income upon which a direct "excise" tax may be imposed. The Brushaber court and other supreme Courts have ruled the "taxation on income is in its nature an excise" Flint v. Stone Tracy Co. 220 U.S. 10, ruled the requirement to pay Excise taxes involves the exercise of privilege." Further the supreme Court case of Peck v. Lowe, 247 U.S. 165, ruled that a tax sustained upon a [natural person would be a "capitation" tax (subject to apportionment) and not an excise tax.

c) I am not the "citizen subject to its jurisdiction" as defined in 26 CFR §1.1-1(c) upon whom the Subtitle A, §1 Graduated Income Tax is imposed.

d) I did not incur a tax liability last year, pursuant to 26 USC 871(a) or §871(b), and I do not anticipate that I will incur a tax liability from said sections in the future. However, if I do receive income subject to taxation under those sections in the future, I will file the appropriate Form.

e) I am not required to pay the income tax. I am not "liable for" or "made liable for" the income tax. I am not "subject to" the income tax and I am not required by regulation to file a 1040 tax return.

Please respond to this Affidavit within 30 Days to:



SALVATORE F. LONANO
NOTARY PUBLIC
COMMISSION # CC 532218
EXPIRES MAR 24, 2000
BONDED THRU



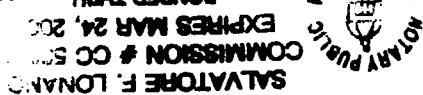
SALVATORE F. LONANO
NOTARY PUBLIC
COMMISSION # CC 532218
EXPIRES MAR 24, 2000
BONDED THRU
ATLANTIC BONDING CO., INC.

If you do not feel this is a reasonable period of time, please request an extension in writing. Failure to respond will mean that you have acquiesced to this Affidavit and Supporting documentation in its entirety and from this date forward the doctrine of "estoppel by acquiescence" will prevail.

Any statements or claims in this AFFIDAVIT, properly rebutted by facts of law, or overriding Article III supreme Court rulings, such shall not prejudice the lawful validity of other claims not properly rebutted or invalidated by facts of law.

I declare under penalty of perjury under the laws of the United States of America that the foregoing, to the best of my knowledge, is true and correct.

02-11-2000.



DAVID G. TRACY-Plaintiff-Affiant

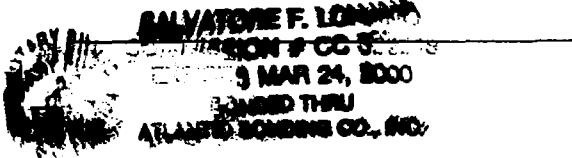
Subscribed and sworn to before me this 11th day of February, 2000.

Notary Public

BROWARD COUNTY, STATE OF FLORIDA LONANO
NOTARY PUBLIC
COMMISSION # CC 532218

15.

ATLANTIC BONDING CO., INC.



**AFFIDAVIT OF POINTS AND AUTHORITIES
SUPPORTING CLAIM THAT ABSOLUTE SOVEREIGNTY IN
THESE UNITED STATES OF AMERICA RESIDES IN THE PEOPLE/ CITIZENS**

Constitution for the United States of America: ARTICLE IV, §4. "The United States shall guarantee to every State in this Union a Republican form of government..."

Republic: "...A state or nation in which the supreme power rests in the body of citizens" - Webster's Dictionary

Sovereign: (Webster's Dictionary) "Having supreme rank, power and authority...Supreme and independent power...indisputable...being above all others...having dominion, power, authority...rightful status of independence and prerogative...greatest in degree."

On Sept. 3, 1783, after the Revolutionary War, a delegation lead by Ben Franklin met in Paris and signed the treaty, "Peace of Paris." In that Treaty, and its two addendums signed by the Kings of England, France and Spain, the King of England ceded his Sovereignty in America, to the People of the American Colonies and to their posterity.

"People of a State are entitled to all rights which formerly belonged to the King by his prerogative." Lansing v Smith (1829) 4 Wend. 9, 20

"There is no such thing as a power of inherent Sovereignty in the government of the United States. In this country sovereignty resides in the People and Congress can exercise no power which they [the sovereign People] have not, by their Constitution entrusted to it: All else is withheld." Julliard v. Greenman. 110 U.S. 421

"In the United States the people are sovereign and the government cannot sever its relationship to the people by taking away their citizenship." - Afroyim V. Rusk. 387 US 253 (1967)

"Here [in America] sovereignty rests with the People." Chisholm. Ex'r v. Georgia, 1 L. Ed (2 Dall) 415, 472. The words "People of the United States" and "citizens" are synonymous terms and mean the same thing. They both describe the political body who, according to our republican-institutions, form the sovereignty ... They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a Constituent member of the sovereignty..."

Wong Kim Ark. p.914, quoting Dred Scott v. Sanford. 60 US. 393. 19 Hos. 577.

"In Europe, the executive is synonymous with the sovereign power of a state...where it is too commonly acquired by force or fraud, or both ... In America, however the case is widely different. Our government is founded upon compact. Sovereignty was, and is, in the people" - Glass v. The Sloop Betsy, 3 Dall 6

SUPREMACY: "Sovereign dominion, authority, and preeminence; the highest state. In the United States the supremacy resides in the People..." Bouvier's Law Dictionary

"Under our form of government, the legislature is NOT supreme. It is only one of the organs of that ABSOLUTE SOVEREIGNTY which resides in the whole body of the PEOPLE; like other bodies of the government, it can only exercise such powers as have been delegated to it, and when it steps beyond that boundary, its acts ... are utterly VOID." Billings v. Hall 7CA. 1

"The People, or the sovereign are not bound by general words in statutes, restrictive of prerogative right, title or interest, unless expressly named. Acts of limitation do not bind the King nor the People. The People have been ceded all the Rights of the King, the former Sovereign...It is a maxim of the common law that when an act of parliament is made for the public good, the advancement of religion and Justice, and to prevent injury and wrong, the king shall be bound by such an act, though not named; but when a statute is general, and any prerogative right, title or interest would be divested or taken from the king (or the People) in such case he shall not be bound." The People vs. Herkimer
15 Am Dec 379, 4 Cowen (N.Y. 345, 348 (1825)

"...The People are the fountain of Sovereignty. The whole was originally with them as their own. The state governments are but trustees acting under a derived authority, and had no power to delegate what was not delegated to them. BUT THE PEOPLE, AS THE ORIGINAL FOUNTAIN, MIGHT TAKE AWAY WHAT THEY HAD LENT AND ENTRUST TO WHOM THEY PLEASE. THEY HAVE THE WHOLE TITLE AND AS ABSOLUTE PROPRIETORS HAVE THE RIGHT OF USING OR ABUSING. - jus utendi et abutendi.. IT IS A MAXIM CONSECRATED IN PUBLIC LAW AS WELL AS COMMON SENSE AND THE NECESSITY OF THE CASE THAT A SOVEREIGN IS ONLY ANSWERABLE FOR ACTS ONLY TO HIS GOD AND HIS OWN CONSCIENCE.. THERE IS NO AUTHORITY ABOVE A SOVEREIGN TO WHICH AN APPEAL CAN BE MADE" Bouvier's 14th Edition Law Dictionary (from 4 Wheat. 402)

"It is the doctrine of the common law that the Sovereign cannot be sued in his own court without his consent," The Siren v. U.S. 74 U.S. 152

"Sovereignty is itself of course, not subject to law for it is the author and source of law..." Yick Wo v Hopkins and Woo Lee v Hopkins 118 U.S. 356.

"THE SOVEREIGNTY OF THE STATE RESIDES IN THE PEOPLE THEREOF."
California, Title 1, Article 1, §100

According to the supreme Court, United States v. Lee, 106 U.S. 196, at 208 "Under our system [in America] the people, who are there [in England] called subjects are here the sovereign... Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty, to the person of a monarch. The citizen here [in America] knows no person, however near to those in power, or however powerful himself to whom he need yield the rights which the law secures to him when it is well administered. ".

**AFFIDAVIT OF POINTS AND AUTHORITIES SUPPORTING CLAIM
THAT I DO NOT OWE MY CITIZENSHIP STATUS TO THE FOURTEENTH
AMENDMENT**

Ellen R. Van Valkenbure v. Albert Brown.- "No white person born with the limits of the United States and subject to their jurisdiction... owes his status of citizenship to the recent [14th] amendment to the Federal Constitution. The purpose of the 14th Amendment.. was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States who could not be brought within the operation of the naturalization laws..."

"The persons declared to be citizens are "All persons born or naturalized in the United States and subject to the jurisdiction thereof." The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject..."

"...The 14th Amendment is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen and not to impose any new resections upon citizenship." - United States v. Wong Kim Ark 169 US 649.68Z 688

**AFFIDAVIT OF POINTS AND AUTHORITIES SUPPORTING CLAIM THE EXCLUSIVE
JURISDICTION OF THE UNITED STATES IS LIMITED TO TERRITORIES
BELONGING TO UNITED STATES.**

Hooven v. Evatt, 394 U.S. 671 states: "The term 'United States' may be used in any one of several senses:

(1) It may be merely the name of a sovereign occupying the position analogous to that of other sovereign in the family of nations [i.e. United States, Japan, England, France, Africa etc.]

(2) It may designate the territory over which the sovereignty of the United States extends, [i.e. Washington D.C., Guam, Puerto Rico, U.S. Virgin Islands,

federal enclaves, etc.] OR

(3) It may be the collective names of the states which are united by and under the Constitution. [i.e. the 50 Republic states of the Union]

When legislating for the 2nd Hooven definition of United States, Congress is not subject to the same Constitutional restrictions as when legislating for 3rd definition of the 50 Republic states.

"In exercising its constitutional power to make all needful regulations respecting territory belonging to the United States, Congress [under Art. 1, §8, Cl. 17, Art. IV §3, Cl. 2. of the Constitution] is not subject to the same constitutional limitations as when it is legislating for the United States [the 50 States under the Constitution]." Hooven Y. Evatt 324 U.S. 674.

"Constitutional restrictions and limitations were NOT applicable to the areas of lands, enclaves, territories and possessions over which Congress had exclusive legislative authority." Downes v. Bodwell. 182 U.S. 244

The jurisdictional limitations of the 2nd Hooven term for United States is restricted by the Constitution as follows:

Constitution, Article I. 8. Clause 17. "The Congress shall have the power...To exercise exclusive legislation in all cases whatsoever, over such district (NOT EXCEEDING TEN MILES SQUARE) as may, by cession of particular states and the acceptance of Congress become the seat of the Government of the United States, (District of Columbia) and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the Erection of Forts, Magazines, Arsenals, other needful Buildings; ... To make laws which shall be necessary and proper for carrying into Execution the foregoing Powers... Constitution, Article IV §3 cl.2 "The Congress shall have Power to dispose of and make all needful Rules and Regulation respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Volume 20: Corpus Juris Sec. §1 785:

"THE UNITED STATES GOVERNMENT IS A FOREIGN CORPORATION WITH RESPECT TO A STATE" NY re: Merriam 36 N.E. 505 1441 S.Ct. 1973,41 L.Ed.287

"There is in our Political System [two governments], a government of the Several [50] States AND a Government of the United States. Each is distinct from the other and has citizens of its own." U.S. v. Cruikshank, 92 U.S. 542, 23 I. Ed 588

26 CFR 1.1-1(c) documents that the Subtitle A, §1 Graduated Income Tax is only applicable to "citizens subject to its jurisdiction" or citizens subject to the jurisdiction of United States. This is NOT the Citizen of the 50 states, under the Constitution.

26 CFR 1.1-1 (c). "Who is a citizen: Every person born or naturalized in the United States and subject to its jurisdiction is a citizen."

"The persons declared to be citizens are "All persons born or naturalized in the United States and subject to the jurisdiction thereof." "The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject..."

Elk v. Wilkins, 112 US 94, 101, 102

"Each [state] declared itself sovereign and independent, according to the limits of its territory... The soil and sovereignty within their acknowledged limits were as much theirs at the Declaration of independence as at this very hour."
Harcourt v. Gaiiard, 25 U.S. (12 Wheat, 523, 526,527)

3A Am Jur 1420. Aliens and Citizens "A Person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if this birth occurs in a territory over which the United States is sovereign..."

**AFFIDAVIT OF POINTS AND AUTHORITIES SUPPORTING CLAIM THAT
COMPENSATION FOR CITIZENS UNDER THE CONSTITUTION IS NOT TAXABLE
BY THE FEDERAL GOVERNMENT AND IS EXEMPT FROM GROSS INCOME**

"Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: the rule of apportionment as to direct taxes and the rule of uniformity as to duties, imports and excises... The tax imposed.. on the income of real estate and of personal property being a direct tax within the meaning of the Constitution, is therefore unconstitutional and void because not apportioned according to representation all those sections, consisting of one entire scheme of [Direct] taxation are necessarily invalid" Pollock v. Farmers Loan & Trust Co. 158, U.S. 601, at 637 (1895)

26 CFR (1939) §9.22(b)-I²⁹"Exclusions from gross income - The following items shall not be included in gross income and shall be exempt from taxation under this title...(b)- I Exemptions; exclusions from gross income. Certain items of income... are exempt from tax and may be excluded from gross income... those items of income which are, under the Constitution, not taxable by the Federal Government".

CONSTITUTION: Article 1; Section 2, Clause 3: "Representations and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers..."

Article 1. Section 9, Clause 4: "No Capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."**

Apportionment means to equally divide among the population (census).

Capitation tax: "a tax imposed upon a person at a fixed rate, regardless of taxpayer's ability to pay, occupation, assets or income." (Law Dictionary)

AFFIDAVIT OF POINTS AND AUTHORITIES SUPPORTING CLAIM THAT THE 16TH AMENDMENT DID NOT GIVE THE IRS OR THE TREASURY THE POWER TO IMPLEMENT AN UNAPPORTIONED DIRECT TAX ON COMPENSATION

...The 16th Amendment contains nothing repudiating or challenging the ruling of the Pollock Case [which found direct taxes on property based income to be unconstitutional... "The 16th Amendment, as correctly interpreted, was limited to indirect taxes and for that reason is constitutional." Brushaber v. Union Pacific RR Co. 240 U.S. 1, at 10, 11, 12, 19

The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the Amendment was adopted." Eisner v. Macomber, 252 U.S. 189, at 205

The Sixteenth Amendment does not extend the Power of taxation to new or excepted subjects" Peck v. Lowe. 247 U.S. 165

The 16th Amendment conferred no new power of taxation..." Stanton v. Baltic Mining 240 U.S. 103, at 112

CONCLUSION: The 16th Amendment is constitutional because it is limited to only indirect taxes. Compensation is property upon which an indirect tax cannot be imposed. The 16th Amendment, therefore, provides no authority for taxing the compensation for labor of Citizens under the Constitution.

**AFFIDAVIT OF FACTS, POINTS AND AUTHORITIES SUPPORTING CLAIM THAT
RIGHT TO LABOR IS FREE FROM TAX UNDER THE FUNDAMENTAL LAW AND
MAY BE EXCLUDED FROM GROSS INCOME**

**"A STATE [OR THE FEDERAL GOVERNMENT] MAY NOT IMPOSE A CHARGE FOR
THE ENJOYMENT OF A RIGHT GRANTED BY THE FEDERAL CONSTITUTION." -**

"Among these inalienable rights , as proclaimed in the Declaration of independence, is the right of men to pursue their happiness, by which is meant, the right to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment... It has been well said that THE PROPERTY WHICH EVERY MAN HAS IS HIS OWN LABOR, as it is the original foundation of all other property so it is the most sacred and inviolable..." Butchers' Union Co. v. Crescent City., 111 U.S., 746, at 756

"Included in the right of personal liberty and the right of private property... is the right to make contracts for the acquisition of property. Chief among such contracts is that of employment by which labor and other services are exchanged for money and other forms of property.". Coddage v. Kansas 236 U.S., 1, at 14.

Treasury Decision, Internal Revenue Vol., 26 No. 3640, R. 769 (1924):

Gross income excludes the items of income specifically exempted by statute or fundamental law [Constitutional Law] free from tax.

Title 26 (1939) Part 11, Subtitle B 63.21-1: "Meaning of net income, the tax imposed by Title 26 of the Act is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income..."

Title 26 USCA, -4128 IRC: Recovery of unconstitutional federal taxes: "Income (excluding interest) attributable to... a tax imposed by the United States which has been held unconstitutional ... may be excluded from gross income."

"The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry." 48 Am Jur 2d §2

"Citizens under our Constitution and laws mean free inhabitants ... Every citizen and freeman is endowed with certain rights and privileges to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people ... That the right to...accept employment as a laborer for hire as a fundamental right is inherent in every free citizen, and is indisputable..."

United States v. Morris, 125 F. Rept. 325, 331.

"...The term [liberty] ... denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life... The established doctrine is that this liberty may not be interfered with, under the guise of protecting public interest, by legislative action..."

Meyer v. Nebraska, 262 U.S

390, 399, 400.

AFFIDAVIT OF POINTS AND AUTHORITIES SUPPORTING CLAIM THE INCOME TAX IS AN INDIRECT EXCISE TAX REQUIRING THE EXERCISE OF A PRIVILEGE

"The conclusion reached in the Pollock case ... recognized the fact that taxation on income was, in its nature, an excise entitled to be enforced as such."

Brushaber v Union Pacific Railroad Co. 240 U.S. 10 16-17.

The Supreme Court in Flint v. Stone Tracy Co. 220 U.S. 107, at pg 154, 165 ruled that 'Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain [revenue taxable] occupations and upon corporate privileges: the requirement to pay such taxes involves the exercise of a privilege.' Excises are never upon any kind of property, money or otherwise, but only upon taxable activities in which the resulting income is simply and conveniently used as the yardstick by which the tax on the activity is measured. ""...Conceding the power of Congress to tax the business activities of private corporations ... the tax must be measured by some standard... it is no objection that the measure of taxation is found in the income..."

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"A tax laid upon the happening of an event as distinguished from its tangible fruits, is an indirect tax..." Tyler v. U.S. 497 at pg 502 (1930)

"The terms 'excise tax' and 'privilege tax' are synonymous, the two are often used interchangeably." American Airways v. Wallace, 57 F.2d 8779 880.

"Neither can the tax be sustained on the natural person, measured by income. Such a tax would be by nature, a capitation rather than an excise."

26 R.C.L. 4139 TAXATION

"A right common in every citizen such as the right to own property or to engage in business of a character not requiring regulation cannot however, be taxed as a special franchise by first prohibiting its exercise and then permitting its enjoyment upon the payment of a certain sum of money."

Stevens v State 2 Ark., 291. 35 Am. Dec. 72 Spring Val. Water Works v Barber- 99 Cal. 36, 33 Pac. 735, 21 L.R.A. 416. Note: 57 L. R.A. 416

AFFIDAVIT OF POINTS AND AUTHORITIES SUPPORTING CLAIM THE INCOME TAX IS VOLUNTARY AND NOT BASED UPON DISTRAINT "OUR TAX SYSTEM IS BASED UPON VOLUNTARY ASSESSMENT AND PAYMENT, NOT UPON DISTRAINT" - Supreme Court:

Flora v. U.S., 362 U.S. 145, 4L ed 2nd 623, 80 S Ct 630

Helvering v Mitchell, 303 IS 391, 399, 82 L ed 917, 921 58 S Ct

Treasury Regulations on Procedural Rules(1954 Code)§601.103 (a)

"The tax system is based on voluntary compliance..." 26 CFR §601.602 (a)

"Our tax system is based on individual self assessment and voluntary compliance." Mortimer Caplin, IRS Commissioner

Voluntary: 1) *given freely without compulsion*, 2) *having the power of free choice* - Webster's Dictionary

Distraint: 1) *to force compulsion*, 2) *to seize and hold goods of another in order to obtain satisfaction of a claim for damages*, 3) *to levy a distress.* - Webster's Dictionary.

In Summary, in America, we have a voluntary income tax system.

Assessment of the income tax is voluntary. We voluntarily assess ourselves. We fill out our own forms and determine how much we owe.

Payment of the income tax is voluntary. We have the power of free choice and we may chose to pay or not to pay the income tax.

Compliance is voluntary. We have the free choice of either complying with the United States income tax Code or not complying.

Compelled and mandatory payment of the graduated income tax would violate our Constitution and the sovereignty of the People. It would also be contrary the maxim of Common Law that rights are not taxable and that the Citizen cannot be compelled in any action against his or her will. An involuntary tax would result in nothing less than "involuntary servitude" violating the 13th Amendment. It would also violate the 5th Amendment clause prohibiting the Government from taking our private property (our compensation) for public use without just compensation.

**AFFIDAVIT OF POINTS AND AUTHORITIES
SUPPORTING CLAIM OF EXEMPTION FROM WITHHOLDING**

Pursuant to: 8 Federal Register, Pg 12266 §404.104(g) Cl. 1,3: Except in the case of certain nonresident alien individuals who are residents of Canada and Mexico, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 1622 " (of the 1939 Code which is currently IRC Title 26 §3402)... " In order for the nonresident alien to claim an exemption from withholding on wages the nonresident alien employee must file with his employer a certificate containing the following., The employee's name and address and a statement that he is not a citizen of the United States, and that he is a resident of the named contiguous country and the approximate period of time during which he has occupied such status. Such certificate shall contain, or be verified by a written declaration that it is made under the penalties of perjury. Although the form is not prescribed the certificate must contain all the information required by this paragraph.

NOTICE

This Affidavit was not written for the purpose of debating the constitutionality or legality of the income tax. It is not a reflection of my personal opinions and frustrations with the United States Tax system. The tax system, when properly applied as an indirect, excise tax to the proper subjects of taxation is both legal and constitutional. I am not a TAX PROTESTER. Any inference to such status by your agency will be considered "defamation of character" and will be litigated as such. None of the Laws or facts presented herein are contradictory to 26 USC, the Internal Revenue Code, 26 CFR, or Article III Court decisions applicable to me. All facts contained herein are based upon ruling case law and unoverruled decisions of the supreme Court of these United States. None of these laws have been found to be "frivolous" by any court, when argued in their exact and proper context. These are technical facts that, under Commercial Law must be rebutted with "case law" or acquiesced to.